

Docket No.: PF-0519-1 CPA

REMARKS

Claims 1-20, 23, 26, and 31-40 have been canceled. Claims 21, 22, 24, 25, 27-30, and 41-45 are currently pending in the present Application. Claims 21, 22, 27, 28, and 43-45 are actively being prosecuted. By this Submission, claim 21 has been amended.

Rejoinder of Claims

Applicants continue to request the rejoinder of claims 24, 25, 29, 30, 41 and 42 which are "method of making" and "method of use" for the polypeptides of product claim 21. Therefore, upon allowance of a product claim, it is believed that claims 24, 25, 29, 30, 41 and 42 should be rejoined and considered in accordance with the Commissioner's Notice in the Official Gazette of March 26, 1996, entitled "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b)." See also MPEP § 821.04 Rejoinder which states:

if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claims will be rejoined.

Amendment to Claim 21

In the interest of expediting prosecution and not for reasons related to patentability, claim 21 (b) has been amended to include the functional limitation of "having apoptotic activity." Claim 21 b) now reads "a polypeptide comprising a naturally-occurring amino acid sequence having at least 90% sequence identity to the amino acid sequence of SEQ ID NO:3 or SEQ ID NO:5, said polypeptide having apoptotic activity." Support for this amendment can be found throughout the specification, for example on page 4, lines 6-18, and page 21, lines 8-11. Therefore, entry of this amendment is deemed proper and is respectfully requested.

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CONCLUSION

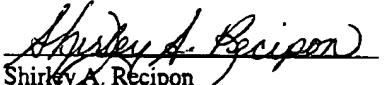
In light of the REQUEST FOR A CONTINUED PROSECUTION APPLICATION (CPA) request, and the above amendment, Applicants request Continued Examination of the present application, and request that prosecution be directed to claims to polypeptides of SEQ ID NO:3 and SEQ ID NO:5, as have already been previously examined.

If the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, Applicants invite the Examiner to contact Applicant's Attorney at (650) 621-8555.

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. 09-0108.

Respectfully submitted,
INCYTE CORPORATION

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VERSION WITH MARKINGS TO SHOW CHANGES MADE
IN THE CLAIMS

Claim 21 has been amended as follows:

21. (Four Times Amended) An isolated polypeptide selected from the group consisting of:

- a) a polypeptide comprising the amino acid sequence of SEQ ID NO:3 or SEQ ID NO:5;
- b) a polypeptide comprising a naturally-occurring amino acid sequence having at least 90% sequence identity to the amino acid sequence of SEQ ID NO:3 or SEQ ID NO:5, said polypeptide having apoptotic activity;
- c) a biologically-active fragment of at least 30 contiguous amino acid residues of a polypeptide having the amino acid sequence of SEQ ID NO:3 or SEQ ID NO:5, said fragment having apoptotic activity; and
- d) an immunogenic fragment of at least 30 contiguous amino acid residues of a polypeptide having the amino acid sequence of SEQ ID NO:3 or SEQ ID NO:5.